UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COMAU, INC.,

Respondent Employer,

-and- Cases 7-CA-52614 and 7-CA-52939

AUTOMATED SYSTEMS WORKERS LOCAL 1123,
affiliated with CARPENTERS INDUSTRIAL COUNCIL,
UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA

Charging Party,

-and-

COMAU EMPLOYEES ASSOCIATION (CEA)

Party in Interest.

COMAU EMPLOYEES ASSOCIATION (CEA)

Respondent Union

-and- Case 7-CB-16912

AUTOMATED SYSTEMS WORKERS LOCAL 1123,
affiliated with CARPENTERS INDUSTRIAL COUNCIL,
UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA

Charging Party
_____/

RESPONDENT COMAU, INC.'S EXCEPTIONS TO
THE ADMINISTRATIVE LAW JUDGE'S DECISION

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Pursuant to Section 102.46 of the Board's Rules and Regulations, Comau, Inc. (hereafter sometimes "Comau," "Respondent," or "Employer") submits the following exceptions to the Recommended Findings of Fact and Conclusions of Law as set forth in Administrative Law Judge Geoffrey Carter's December 21, 2010 Decision. Concurrently with these Exceptions, Comau is submitting a Brief that sets forth the record citations, factual grounds, and legal authorities supporting the Exceptions. Respondent takes exception to both (a) the ALJ's affirmatively making specific findings and/or conclusions that are not supported by the record or governing precedent, and (b) the ALJ's failure to make specific findings and/or conclusions that are supported by the record and governing precedent.

Respondent excepts to:

1. The ALJ's finding/conclusion that Leaders may "recommend employees to perform the overtime work" and that "employees wishing to take a day off must first obtain their leader's approval," without making the additional finding that supervision or management makes all such decisions (page 5, lines 7-10 of the ALJ's Decision).

2. The ALJ's finding/conclusion that in some instances "employee leave requests have been approved without obtaining the supervisor's signature, leaving the leader as the only individual to sign the request," without making the additional finding that Comau policy requires supervisory approval in all instances, even if a supervisor's signature is not always obtained (page 5, lines 13-15).

3. The ALJ's finding/conclusion that "Comau's unilateral action [of implementing the new Company-wide health care plan contained in its imposed last best offer] was an unfair labor practice because the ASW/MRCC had not agreed to the

health insurance plan, and because the previously declared impasse (declared by Comau in December 2008) was subsequently broken by (at the latest) January 2009" (page 8, lines 34-37).

4. The ALJ's finding/conclusion that Richard Mroz "agreed to sign the [disaffection] petition after confirming that his brother also signed the document," without finding that Mroz testified (and there is no countervailing evidence) that his brother's support for the petition was the crucial motivating factor for Mroz himself signing the petition (page 11, lines 23-24).

5. The ALJ's finding/conclusion that "Comau violated Section 8(a)(5) and (1) by unilaterally implementing a new health insurance plan in the absence of an agreement or a bona fide impasse with the ASW/MRCC" (page 16, lines 37-39).

6. The ALJ's failure to make findings/conclusions rejecting the General Counsel's "alternative theory that the [disaffection] petition was tainted because it was circulated by employees who were Comau's agents" — inasmuch as the record evidence and governing precedent disprove that "alternative theory," and the ALJ should have so held (page 17, lines 29-32, 48-52).

7. The ALJ's failure to make a finding/conclusion that the three leaders alleged to be Comau "agents" under the General Counsel's "alternative theory" lacked any authority at all (whether actual or apparent) on behalf of Comau to solicit signatures for or otherwise promote unit employees' efforts to change union representation from the ASW/MRCC to the CEA.

8. The ALJ's failure to make a finding/conclusion that the General Counsel presented no witness testimony or other evidence suggesting that any signatures on the

disaffection petition (or the earlier decertification petition) were not freely affixed or that they were coerced in any respect by anyone.

9. The ALJ's failure to make a finding/conclusion that the General Counsel's "alternative theory" was legally precluded by Section 152(2) of the Act because, as a matter of statutory definition, the individual in question could not have been acting as an agent of both the CEA and Comau simultaneously for the same action.

10. The ALJ's finding/conclusion that "Comau committed an unfair labor practice on March 1, 2009, when it violated Section 8(a)(5) and (1) by changing employees' health care benefits without the ASW/MRCC's consent and in the absence of a bona fide impasse" (page 18, lines 20-22).

11. The ALJ's finding/conclusion that "[t]he *Master Slack* test [see *Master Slack Corporation*, 271 NLRB 78 (1984)] is an objective test aimed at evaluating whether a causal relationship exists between unremedied unfair labor practices and subsequent loss of union support" and that "subjective views of employees about a past unfair labor practice and its effects are not relevant to the *Master Slack* inquiry" — inasmuch as the *Master Slack* test has both subjective and objective elements, and employees' views are considered, as shown by Board and court precedent (page 18, lines 41-43; page 21, lines 50-51; and page 22, lines 26-28).

12. The ALJ's finding/conclusion that "[t]he impasse regarding employee health insurance coverage was broken on January 7, 2009" and that this rendered it improper or illegal for Comau to "continue[] to prepare employees for the [March 1, 2009] effective date of the health insurance plan set forth in Comau's imposed

last best offer," or otherwise precluded Comau from allowing the new health care plan to take effect on March 1 as scheduled in the last best offer (page 19, lines 8-11).

13. The ALJ's finding/conclusion that "the December 2009 disaffection petition was essentially an effort to renew the Spring 2009 decertification movement that started just before the unilaterally imposed health care plan (unlawfully) took effect," and the ALJ's related failure to find that the decertification movement began months before the new health care plan lawfully took effect on March 1, 2009 and that the December 2009 disaffection petition was motivated by additional factors occurring later (page 19, lines 31-33).

14. The ALJ's finding/conclusion that Comau's allowing the pre-scheduled changes in the health care plan to take effect on March 1, 2009 "harm[ed] the union's status as the bargaining representative" and "undermine[d] the union in the eyes of the employees and g[a]ve the impression that the union is powerless" — and the ALJ's related failure to find that any such harm or undermining had lawfully occurred as early as Comau's lawful announcement in December 2008 of the March 1, 2009 health care plan changes (and in some instances even earlier) (page 20, lines 3-6).

15. The ALJ's finding/conclusion that, even though there were other sources of employee discontent with the ASW/MRCC, "several of those sources . . . had been present since the ASW/MRCC merger in March 2007, but were tolerated to some degree with the hope that in the end the merger would be beneficial" – inasmuch as no record evidence supports this assessment of the employees' willingness to "tolerate" those matters or the implied finding that the employees were prepared to continue tolerating them (page 20, lines 35-38).

16. The ALJ's finding/conclusion that, "even though there were other reasons for bargaining unit employees to be unhappy with the ASW/MRCC," which the ALJ listed but assigned inadequate weight to, "the fact remains that Comau's unilateral imposition of the health insurance plan had a reasonable tendency to (and did, in fact) cause employee disaffection with the ASW/MRCC" — inasmuch as the many "other reasons" principally and independently motivated the employees' disaffection for the ASW/MRCC (page 20, lines 39-43).

17. The ALJ's failure to make a finding/conclusion that the bargaining unit employees had been told, when they affiliated with the MRCC in March 2007, that they could try out the affiliation for a couple of years and, if thereafter dissatisfied, they could vote the MRCC out the same way the MRCC had been voted in.

18. The ALJ's failure to make a finding/conclusion that in late 2008 the entire Executive Committee of the ASW/MRCC (in the absence of Pete Reuter and Darryl Robertson, who were paid employees of the MRCC) unanimously resolved to get rid of the MRCC and thereafter took concrete steps (including visiting the NLRB Regional Office) to begin the decertification process.

19. The ALJ's finding/conclusion that the ALJ could properly exclude from testifying dozens of the CEA's members who intended to testify regarding their reasons for supporting the decertification and disaffection petitions, on the ground that such evidence would be "subjective," "cumulative," and "not relevant" under *Master Slack's* supposed "objective" legal standard — inasmuch as the ALJ himself relied on "subjective" evidence, he improperly restricted the record, and he thereby committed legal error.

20. The ALJ's failure to make findings/conclusions regarding the witness testimony at the *Saint Gobain* hearing, which established that the vast majority of the employees who signed the decertification petition (filed April 14, 2009) did so before March 1, 2009, and did so due to the ASW/MRCC's broken promises and exorbitant dues prior to March 1, 2009, and not because of the health care plan changes that took effect later on March 1, 2009.

21. The ALJ's failure to make a finding/conclusion that the President of the MRCC, Doug Buckler, acknowledged to Willie Rushing, the filer of the decertification petition, that "Pete Reuter is a liar" and that bargaining unit employees were justifiably discontented with the MRCC.

22. The ALJ's failure to make a finding/conclusion that members of the Executive Committee who had signed the decertification petition later blacked out their names because Pete Reuter, upon learning of the decertification effort, had threatened that any members of the Executive Committee who had participated in the effort would be drummed out of the union, lose their jobs at Comau, and possibly face litigation.

23. The ALJ's failure to make a finding/conclusion that the delay to April 14, 2009 for Willie Rushing's filing of the decertification petition, when most of the signatures had been obtained in February 2009, was caused by further broken promises by the MRCC of job opportunities, and had nothing to do with the March 1, 2009 effective date of the new health care plan.

24. The ALJ's failure to make a finding/conclusion that the bargaining unit employees were split 50/50 on which health care plan was better — the new Company-wide plan, or the alternative plan proposed by the MRCC.

25. The ALJ's finding/conclusion that, even though the sole alleged unfair labor practice occurred on March 1, 2009, in applying the *Master Slack* causation analysis he could consider the facts that the health care plan changes were lawfully announced in December 2008 and that transitional meetings were lawfully held with employees in January 2009, and he could conclude that a future unfair labor practice was "on the minds of employees at least by January 2009" — inasmuch as this theory of an inchoate or anticipatory unfair labor practice being given retroactive effect is not recognized by any Board or court precedent, inverts the cause-and-effect requirement, is not supported by record evidence, and is completely illogical (page 20, lines 45-51, and page 21, lines 11-13).

26. The ALJ's failure to make a finding/conclusion that the fact that the March 1, 2009 health care plan change took no one "by surprise" because it had been announced and transitioned months earlier disproves the ALJ's theory of an inchoate or anticipatory unfair labor practice being given retroactive effect (page 20, lines 48-50).

27. The ALJ's failure to make a finding/conclusion that any causation theory that considered evidence of what had occurred in December 2008 and January 2009 was time-barred by the six-month statute of limitations; was precluded by the NLRB General Counsel's determination in a prior case that Comau's actions in December 2008 were lawful; and was precluded by the Board's decision in *Jefferson Chemical Company*, 200 NLRB 992 (1972).

28. The ALJ's finding/conclusion that "even if the causation analysis were limited to events that occurred on or after March 1, 2009, there is ample evidence that

links the March 1, 2009 unfair labor practice with the loss of support for the ASW/MRCC leading up to the December 2009 disaffection petition" (page 21, lines 22-25).

29. The ALJ's finding/conclusion that "the fact that the drafters of the [disaffection] petition thought such a disclaimer [of a causal connection between the March 1, 2009 health care plan change and the employees' December 2009 disaffection] was necessary supports [a] finding that the health insurance plan and the accompanying premiums remained points of concern for bargaining unit employees" — inasmuch as that is illogical, completely disregards the employees' own declarations, and ignores the fact that the ASW/MRCC was making such a false claim which was being pursued at that very time by the NLRB (page 21, lines 45-47).

30. The ALJ's finding/conclusion that "all of the factors outlined in *Master Slack* demonstrate that Comau's unilateral implementation of its new employee health insurance plan on March 1, 2009 had a causal relationship to the loss of support for the ASW/MRCC and, in turn, the December 2009 disaffection petition" (page 22, lines 1-5).

31. The ALJ's failure to make findings/conclusions that adequately addressed the Board and court precedents affecting the *Master Slack* analysis, which Comau had cited (page 22, lines 30-50).

32. The ALJ's finding/conclusion that "[t]he disaffection petition therefore was tainted by the March 1, 2009 unfair labor practice, and it was unlawful for Comau to rely upon the December 2009 disaffection petition as its basis for withdrawing recognition from the ASW/MRCC" (page 22, lines 5-7).

33. The ALJ's findings/conclusions that Comau committed violations of the Act (a) by "withdrawing recognition from the ASW/MRCC on December 22, 2009 and

subsequently refusing to bargain with the ASW/MRCC"; (b) "[b]y extending recognition to the CEA and entering into a collective bargaining agreement with the CEA"; (c) by "interfer[ing] with the formation and administration of a labor organization"; and (d) "[b]y giving effect to the union security clause in its collective bargaining agreement with the CEA" thereby "encourag[ing] membership in a labor organization and discriminat[ing] against employees regarding hiring and the terms and conditions of employment" (page 22, lines 10-24, and page 23, lines 1-2).

34. The ALJ's related findings/conclusions that the CEA committed related violations of the Act (a) "in connection with Comau's withdrawal of recognition of the ASW/MRCC and recognition of the CEA"; (b) by accepting recognition from Comau; and (c) by maintaining a union security clause in its collective bargaining agreement with Comau thereby causing Comau to "encourag[e] membership in a labor organization and discriminat[e] against employees regarding hiring and the terms and conditions of employment" (page 23, lines 5-18).

35. The ALJ's findings/conclusions that Comau Human Resource Director Fred Begle's and Site Supervisor Duane Jerore's statements to employees Gaspar Calandrino, Nizar Akkari, and Jeffrey T. Brown regarding their dues payment obligations to the CEA pursuant to the collective bargaining agreement were coercive and violated Section 8(a)(1) of the Act (page 24, lines 18-40).

36. The ALJ's finding/conclusion that the clarifying statement published to Comau employees by its Human Resources Director Fred Begle, explaining employees' dues payment obligation to the CEA pursuant to the collective bargaining agreement, was not specific, was incomplete, was ambiguous, did not satisfy the applicable legal

standard, and was inadequate to cure any violation of the Act relating to dues-checkoff authorizations (page 26, lines 26-32; page 26, lines 44-51).

37. The ALJ's findings/conclusions that Fred Begle's clarifying memorandum "did not address restrictions that the CEA placed (with Comau's tacit consent) on other forms of payment," and that Comau "essentially acquiesced to the [CEA's] restrictions by allowing them to persist even after Comau issued its June 2010 [clarifying] memo" — inasmuch as there is no record evidence that Fred Begle had seen or reviewed or acquiesced to the CEA's restrictions (page 26, lines 44-51).

38. The ALJ's findings/conclusions that Conclusions of Law Nos. 1-11 are supported by the record evidence or by governing Board and court precedent (page 26, lines 35-41, and page 27, lines 1-45).

39. The ALJ's findings/conclusions that the recommended Remedy and Order are appropriate and legally warranted based on the record evidence, applicable legal principles, and governing Board and court precedents (page 27, lines 50 through page 31, line 28).

40. The ALJ's findings/conclusions that the requirements established by the U.S. Court of Appeals for the District of Columbia Circuit for the imposition of a bargaining order are satisfied in the circumstances of this case (page 28, line 5 through page 29, line 24).

41. The ALJ's findings/conclusions that Comau should be affirmatively ordered to (a) re-recognize and bargain with the ASW; (b) withdraw recognition from the CEA; (c) reimburse employees with interest for fees, dues or other monies paid by them to the CEA pursuant to the collective bargaining agreement; and (d) post a Notice to

Employees in the form attached to the ALJ's Decision (page 30, line 36 through page 31, line 28; and attached Notice to Employees).

42. The ALJ's finding/conclusion that Comau should be ordered to withhold recognition from the CEA in the future "unless and until that labor organization has been certified by the Board as the exclusive collective bargaining representative of [the bargaining unit] employees" — inasmuch as the ALJ has failed to take into account other lawful means for recognizing a union (page 31, lines 1-3; and Notice to Employees).

43. The ALJ's October 14, 2010 denial of Comau's motion to supplement the record with the transcript and exhibits from the October 5, 2010 deposition of General Counsel's witness David Baloga, taken in connection with the 10(j) action then pending in the U.S. District Court for the Eastern District of Michigan. This exception will be pursued only if the General Counsel files a cross-exception to ALJ Carter's findings/conclusions that the "ASW/MRCC meeting attendance figures that were admitted into evidence . . . are not sufficiently reliable [to allow] any meaningful conclusions about whether the various attendance fluctuations resulted from [the March 1, 2009] unfair labor practice" (fn. 3, p. 2, line 41 through p. 3, line 37); and/or "[w]ithout the comparison data from 2008, I cannot rely on the meeting attendance figures to conclude with any confidence that attendance declined because of (among other possibilities) Comau's unfair labor practice on March 1 . . ." (fn. 16, p. 9, lines 43-47).

Respectfully submitted,

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Dated: February 15, 2011

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PROOF OF SERVICE

Pursuant to 28 U.S.C. §1746, I hereby certify under penalty of perjury that the following is true and correct: On February 15, 2011, I caused to be served via electronic mail a copy of **RESPONDENT COMAU, INC.'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION AND BRIEF IN SUPPORT OF ITS EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION** upon:

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